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 MIKE GLEASON
 KRISTIN K. MAYES

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ARIZONA CORPORATION COMMISSION

22

DATE: July 13, 2004
 DOCKET NO: RR-02635B-04-0375
 TO ALL PARTIES:

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 2004 JUL 13 A 10:57
 AZ CORP COMMISSION
 DOCKET CONTROL

Enclosed please find the recommendation of Administrative Law Judge Marc E. Stern. The recommendation has been filed in the form of an Opinion and Order on:

BURLINGTON, NORTHERN AND SANTA FE RAILWAY
 (UPGRADE CROSSING)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by 4:00 p.m. on or before:

JULY 22, 2004

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Working Session and Open Meeting to be held on:

AUGUST 3 AND 4, 2004

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Secretary's Office at (602) 542-3931.

Arizona Corporation Commission

DOCKETED

JUL 13 2004

DOCKETED BY

BRIAN C. McNEIL
 EXECUTIVE SECRETARY

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 MARC SPITZER, Chairman
4 WILLIAM A. MUNDELL
5 JEFF HATCH-MILLER
6 MIKE GLEASON
7 KRISTIN K. MAYES

8 IN THE MATTER OF THE APPLICATION OF
9 THE ARIZONA DEPARTMENT OF
10 TRANSPORTATION TO UPGRADE AN
11 EXISTING CROSSING OF THE BURLINGTON
12 NORTHERN AND SANTA FE RAILWAY AT 36th
13 AVENUE, IN THE CITY OF PHOENIX,
14 MARICOPA COUNTY, ARIZONA, AT AAR/DOT
15 NO. 025-496-G.

DOCKET NO. RR-02635B-04-0375

DECISION NO. _____

OPINION AND ORDER

11 DATE OF HEARING: June 24, 2004
12 PLACE OF HEARING: Phoenix, Arizona
13 PRESIDING OFFICER: Marc E. Stern
14 APPEARANCES: Mr. Timothy Sabo, Staff Attorney, Legal Division, on
15 behalf of the Utilities Division of the Arizona
16 Corporation Commission.

16 **BY THE COMMISSION:**

17 On May 20, 2004, the Arizona Department of Transportation ("ADOT") submitted to the
18 Arizona Corporation Commission ("Commission") a request for an Opinion and Order for the
19 approval of an agreement between ADOT and the Burlington Northern and Santa Fe Railway
20 Company ("Railroad") to upgrade the Railroad's crossing at 36th Avenue, AAR/DOT No. 025-496-G,
21 in the City of Phoenix, Arizona ("Application").

22 On June 3, 2004, by Procedural Order, the Application was set for a hearing and ADOT was
23 ordered to notify any interested party of the Application and the hearing.

24 On June 17, 2004, ADOT certified that it provided notice pursuant to the terms of the
25 Procedural Order.

26 On June 24, 2004, a full public hearing was held before a duly authorized Administrative Law
27 Judge of the Commission at its offices in Phoenix, Arizona. At the conclusion of the hearing, the
28 matter was taken under advisement pending submission of a recommended Opinion and Order to the

1 Commission.

2 * * * * *

3 Having considered the entire record herein and being fully advised in the premises, the
4 Commission finds, concludes, and orders that:

5 **FINDINGS OF FACT**

6 1. On May 20, 2004, ADOT filed an Application in which it requested an Opinion and
7 Order from the Commission with respect to an agreement between ADOT and the Railroad for the
8 upgrade of a crossing to replace existing crossbucks and to install automatic flashing light signals at
9 36th Avenue, AAR/DOT No. 025-496-G, in the City of Phoenix, Arizona.

10 2. On June 17, 2004, ADOT filed certification that it provided notice by registered U.S.
11 mail of the Application and hearing thereon.

12 3. A hearing was held as scheduled on June 24, 2004.

13 4. The Application provides for the Railroad to replace old crossbucks with automatic
14 gates and automatic flashing light signals.

15 5. Staff testified that the cost apportionment for the installation of the crossing upgrade
16 as provided in the Application was proper.

17 6. Staff has recommended that the Application be approved.

18 **CONCLUSIONS OF LAW**

19 1. The Commission has jurisdiction over the parties and over the subject matter of the
20 Application pursuant to Article XV of the Arizona Constitution and A.R.S. §§ 40-336, 40-337 and
21 40-337.01.

22 2. Notice of the Application was provided in accordance with the law.

23 3. Installation of the crossing upgrade is necessary for the public's convenience and
24 safety.

25 4. The Application should be approved as recommended by Staff.

26 5. After installation of the crossing, the Railroad should maintain the crossing in
27 accordance with A.A.C. R14-5-104.

28 ...

ORDER

IT IS THEREFORE ORDERED that the Arizona Department of Transportation's Application is hereby approved.

IT IS FURTHER ORDERED that the Burlington Northern and Santa Fe Railway Company shall complete the crossing upgrade as described in the Application within fifteen months from the effective date of this Decision.

IT IS FURTHER ORDERED that the Burlington Northern and Santa Fe Railway Company shall notify the Commission, in writing, within ten days of both the commencement and the completion of the crossing upgrade, pursuant to A.A.C. R14-5-104.

IT IS FURTHER ORDERED that upon completion of the crossing upgrade, the Burlington Northern and Santa Fe Railway Company shall maintain the crossing in compliance with the A.A.C. R14-5-104.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN

COMMISSIONER

COMMISSIONER

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Secretary of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this ____ day of _____, 2004.

BRIAN C. McNEIL
EXECUTIVE SECRETARY

DISSENT _____

DISSENT _____

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SERVICE LIST FOR:

BURLINGTON NORTHERN AND SANTA FE
RAILWAY COMPANY

DOCKET NO.

RR-02635B-04-0375

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